



**Town of Walpole
Commonwealth of Massachusetts
Zoning Board of Appeals**

Matthew Zuker, Chairman
James S. DeCelle, Vice Chairman
Craig W. Hiltz, Clerk
Mary Jane Coffey, Member
Susanne Murphy, Member
Robert Fitzgerald, Associate Member

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DECISION - BOARD OF APPEALS CASE NO. 20-17

APPLICANT:
PATRICK CHAWAN

LOCATION OF PROPERTY INVOLVED:

1079 West Street, Walpole and shown on the Assessors Map as Lot No. 38-54, Zoning District R.

APPLICATION:

A Special Permit under Section 5-B.2 of the Zoning Bylaw to allow an Accessory In-Law Suite above a two car garage (to be built) at the single family residence located at 1079 West Street, Walpole, MA 02081, and to allow said Accessory In-Law Suite to be larger than the one thousand (1,000) sq. ft. allowed.

On September 6, 2017 a Public Hearing was held in the Main Meeting Room of Town Hall for the purpose of receiving information and voting upon a decision as to the granting of a **Special Permit** to Patrick Chawan.

The following members were present and voting:

Matthew Zuker, Chairman
James S. DeCelle, Vice Chairman
Craig W. Hiltz, Clerk
Mary Jane Coffey, Member
Susanne Murphy, Member

The following members were present and not voting:

Robert Fitzgerald, Associate member

A motion was made by Craig Hiltz and seconded by Mary Jane Coffey to grant a Special Permit under Section 5-B.2. of the Zoning Bylaw to allow an Accessory In-Law Suite above a two car garage (to be built) at the single family residence located at 1079 West Street, Walpole, MA 02081.

The vote was **5-0-0 in favor**; therefore the application for a Special Permit is hereby granted, subject to the following conditions:

CONDITIONS:

1. The Accessory In-Law Suite shall not be held in separate ownership from the principal dwelling unit.

2. The Accessory In-Law Suite shall only be occupied by individuals within the third degree of kinship of the owner of the principal dwelling unit.
3. The property owner shall record this Decision with the Norfolk County Registry of Deeds and provide a copy along with proof of recording to the Board of Appeals, Town Clerk and Building Department.
4. When ownership of the property changes, the new owner shall notify the Building Commissioner so as to update the Accessory In-Law Suite List.
5. The building shall be constructed according to the architectural plans submitted at the public hearing, pages 1-4, dated June 27, 2017, by Sami E. Kassis, P.E. of Sami LLC, 28 Old Town Road, Walpole, MA 02081.
6. The Applicant shall receive a Certificate of Occupancy from the Building Department before occupying the Accessory In-Law Suite.
7. There will be no more than one water meter for the house and Accessory In-Law Suite unless the Applicant receives permission from the Board to install a second meter.
8. There shall be no lodgers in either the original dwelling unit or the Accessory In-Law Suite.
9. The Applicant will work with the Fire Department and E911 to determine if the Accessory In-Law Suite requires its own address.
10. The life safety devices (smoke and CO detectors) in the main house and Accessory In-Law Suite will be brought into compliance with the current fire code.
11. The total number of bedrooms, or rooms that could be used as a bedroom, may not exceed four, and that any increase to the number of bedrooms will require that the existing septic system be upgraded to support that increase.
12. The plans shall show the well and piping so that required clearances can be confirmed so that there is no damage during construction of the in-law suite.

REASONS FOR DECISION:

It is the finding of the Board that the Applicant was able to meet the requirements of Section 5-B.2. to allow the requested Accessory In-Law Suite at the subject property. The Board finds that the in-law suite is in character with and follows the intent of the Zoning District in which it is located. Accordingly, the Board has determined that the Special Permit requested is warranted. Specifically, the Board made the following findings pursuant to Section 2.2.B.(1) of the Zoning Bylaw:

(a) does and shall comply with such criteria or standards as shall be set forth in the section of this Bylaw which refers to the granting of the requested special permit;

The Board finds that the proposed in-law suite complies with all of the criteria of Section 5-B.2 A & B as set forth below. Accordingly, the Board finds this condition satisfied.

(b) shall not have vehicular and pedestrian traffic of a type and quantity so as to adversely affect the immediate neighborhood;

The Board finds that there will be a change in parking due to the addition of a two car garage, however, the proposed parking change per the plans submitted with the application does not adversely affect the immediate neighborhood as parking will be contained within the garage. As such, this criterion is satisfied.

(c) shall not have a number of residents, employees, customers, or visitors, so as to adversely affect the immediate neighborhood;

The Board finds that the single-family home being residential in nature will have no employees or customers. Accordingly, the Board finds that there will not be any adverse effect on the neighborhood and this condition is satisfied.

(d) shall comply with the dimensional requirements applicable to zoning district in which the premises is located, including, without limitation, the applicable lot coverage and buffer zone requirements in Section 5-G;

The Board finds that as shown on the plans submitted with the Application, the single family dwelling conforms to the dimensional requirements of the Zoning Bylaw. The addition of the two car garage and in-law suite will be 896 sq. ft. each, along with a sunroom of 200 sq. ft. Because the use of the sunroom will be shared, and not dedicated to the in-law use, the Board found the square footage does not need to be included in the in-law suite square footage which is therefore less than the 1,000 sq. ft. requirement. So additional relief from this requirement is not required. The lot size of the property is 116,367 +/- sq. ft. which is sufficient with the size of the building and proposed addition. As this house is a residential use, there is no buffer zone required. Therefore, the Board is satisfied that this condition is met.

(e) shall not be dangerous to the immediate neighborhood of the premises through fire, explosion, emission of wastes, or other causes;

The Board finds that the proposed in-law suite in the existing dwelling is residential in nature and there is nothing being used to cause any danger to the immediate neighborhood of the premises through fire, explosion, emissions of waste or other causes and this condition is satisfied.

(f) shall not create such noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisance or serious hazard so as to adversely affect the immediate neighborhood;

The Board finds that the proposed use is residential in nature. There is no proposed use in addition to the residential use that would create such noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisance or serious hazard so as to adversely affect the immediate neighborhood. Therefore, this condition is satisfied.

(g) shall not adversely affect the character of the immediate neighborhood; and

The Board finds that the immediate neighborhood is residential in nature and the proposed undertaking is consistent with the area and immediate neighborhood. The architectural plans show the addition is being constructed in a tasteful manner, with a single exterior landing that keeps the home looking like a single family dwelling and remains in character with the neighborhood. The proposed addition is smaller than the main part of the house, with elevations that comply with all dimensional requirements and remain in character with the immediate neighborhood. As such, the proposed addition will not have an adverse effect to the character of the immediate neighborhood. Thus, this condition is satisfied.

(h) shall not be incompatible with the purpose of the Zoning Bylaw or the purpose of the zoning district in which the premises is located.

The Board finds that the purpose of the Zoning Bylaw in part states, "to encourage housing for persons of all income levels..." "to encourage the most appropriate use of the land". The proposed in-law suite and garage in the existing house will allow the owners to remain in their home, by allowing the Applicant's parents to reside in his home, which is consistent with the purpose of the Bylaw. As such, this use, conditioned appropriately, is entirely compatible with the purpose of the Zoning Bylaw and this condition is satisfied.

Additionally, the necessary Findings and Determinations noted in Section 5-B.2. B. & C. of the Zoning Bylaw have been satisfied and addressed through this Decision and the conditions.

Said Special Permit is granted pursuant to Massachusetts General Law c. 40A § 9 which provides in pertinent part as follows: "...Zoning ordinances or by-laws shall provide that a special permit granted under this section shall lapse within a specified period of time, not more than two years, which shall not include such time required to pursue or await the determination of an appeal referred to in section seventeen, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by such date except for good cause."

Massachusetts General Laws c. 40A, §11 provides in pertinent part as follows: "A special permit, or any extension, modification or renewal thereof, shall not take effect until a copy of the decision bearing the certification of the city or town clerk that 20 days have elapsed after the decision has been filed in the office of the city or town clerk and either that no appeal has been filed or the appeal has been filed within such time, or if it is a special permit which has been approved by reason of the failure of the permit granting authority or special permit granting authority to act thereon within the time prescribed, a copy of the application for the special permit-accompanied by the certification of the city or town clerk stating the fact that the permit granting authority or special permit granting authority failed to act within the time prescribed, and whether or not an appeal has been filed within that time, and that the grant of the application resulting from the failure to act has become final, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The person exercising rights under a duly appealed special permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone. This section shall in no event terminate or shorten the tolling, during the pendency of any appeals, of the 6 month periods provided under the second paragraph of section 6. The fee for recording or registering shall be paid by the owner or applicant."

APPEALS FROM THIS DECISION FOR A SPECIAL PERMIT, IF ANY, SHALL BE MADE PURSUANT TO MASSACHUSETTS GENERAL LAWS CHAPTER 40A, SECTION 17, AND SHALL BE FILED WITHIN TWENTY DAYS AFTER THE DATE OF FILING OF THE NOTICE OF DECISION IN THE OFFICE OF THE CITY OR TOWN CLERK.

WALPOLE ZONING BOARD OF APPEALS

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Craig W. Hiltz, Clerk

CH/am

cc: Town Clerk Engineering Planning Board Applicant
 Board of Selectmen Building Inspector Conservation Commission Abutters

This decision was made on September 6, 2017 and filed with the Town Clerk on September 13 , 2017.